Cr. 1167 - 91 (2)

CF0000059016

XII-188/(Jail)
C.J.P.R.—5,000-9-81

APPEAL OF PRISONER

No. 1881 Name कोनो लिङ्गुप

Father's name सिरिल एक्का उर्फ़ Age २०

Residence फ्रजकानीया गुमला Sentenced to आजीवन कारावास on 30.9.91

Under section ३०२ भा.द. by श्री एस.के गुप्ता अपर सत्र न्यायाधीश अम्बिकापुर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 30.9.91

2 Date of which copy received 30.9.91

3 Date on which Appeal sent 10.10.91

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 1881 Name कोनो लिङ्गुप

Continued in जे 1312 Jail अम्बिकापुर dated 10.10.91 198

No. Raigarh

Forwarded to the CHIEF JUDICIAL MAGISTRATE

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent Central/ Distt./ Sub-Jail

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. 6 CJM Raigarh Dated 12/10/91 198

Forwarded to the Session Judge Raigarh (MP)

C.J.Magistrate

12.10.91

Date of receipt in Appliate Court

(P.T.O.)

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 1167/1991

Kornalius

Vs.

State of Madhya Pradesh (now Chhattisgarh)

(15) A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 1167/1991

Kornalius

Vs.

State of Madhya Pradesh (now Chhattisgarh)

CORAM : **HON'BLE SHRI FAKHRUDDIN,**
HON'BLE SHRI D.R.DESHMUKH, J.J.

Shri Sandip Shrivastava appeared as amicum curiae on behalf of the accused appellant.

Shri U.N.S. Deo, Govt. Advocate for the State.

JUDGMENT

(Delivered on 21-07-2005)

Per Dilip Raosaheb Deshmukh, J.

1. This jail appeal is directed against the judgment dated 30-09-1991 delivered by Shri S.K.Gupta, Additional Sessions Judge, Jashpur Nagar, District-Raigarh in Sessions Trial No. 77-1991 whereby the appellant was convicted under section-302 of the I.P.C. for committing murder of his father Siril Ekka and was sentenced to imprisonment for life.

2. Admittedly, the deceased Siril Ekka was the father, Mst.Kurdula PW-2 the sister-in-law, Antonius Ekka PW-1 the brother and Mary Kumari PW-3 the sister of the appellant.

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3. Briefly stated the prosecution case is that on 16-02-1991, a quarrel ensued between Siril Ekka and the appellant in their house whereupon the accused appellant dealt Tangia blows on the head and cheek of Siril Ekka. Siril Ekka succumbed to the injuries on the spot. When Mary Kumari PW-3 arrived at the spot, the appellant told her that he was starving for the last 3 days and while he was having food, his father kicked him twice, as a result of which he picked up the axe and assaulted his father. The accused appellant also made an extra judicial confession before Mst. Kurdula PW-2.

4. Antonius Ekka PW-1, who saw the dead body of his father and the appellant standing outside the house, lodged the F.I.R. vide Ex.P-1in Police Station-Kunkuri on the same day at 4.10 P.M. Investigating Officer M.B.Pandey PW-7 reached the spot on the same day and prepared panchnama of the dead body of the deceased vide Ex.P-5. Dr. S.B.Jain PW-8 who conducted the autopsy found fracture of Right frontal bone 5" in semi circular shape and another fracture of Right Maxilla with Haematoma and laceration of brain matter below the fracture of bone. He opined that the cause of death of deceased Siril Ekka was hemorrhagic shock due to fracture of skull and maxilla. In his opinion, ~~the~~ death was homicidal. During investigation, at the instance of the appellant vide memorandum Ex.P-6, one Tangia was seized from the spot vide Ex. P-7, plain soil and blood stained soil were seized vide Ex.P-8. Tangia seized at the instance of the accused appellant was sent for medical examination. Dr. Jain, PW-8 opined that the injuries

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sustained by Siril Ekka could be caused by this weapon. After completion of investigation, the accused was prosecuted for committing the murder of Siril Ekka under section-302 of I.P.C.

5. The accused appellant abjured his guilt, pleaded innocence in defence and led no evidence. The prosecution examined as many as 9 witnesses in support of its case. The learned Trial Judge relying upon the testimony of Mary Kumari PW-3 and Mst. Kurdula PW-2 relating to extra judicial confession made by the accused appellant and the evidence of Investigating Officer M.B.Pandey PW-7 regarding seizure of Tangia at the instance of the accused appellant convicted the accused appellant for committing murder of Siril Ekka under section-302 of the I.P.C. and sentenced him as shown above in Para-1.

6. Shri Sandeep Shirvastava, Counsel appearing as amicus curiae on behalf of the accused appellant has mainly contended that the testimony of Mst. Kurdula PW-2 and Mary Kumari PW-3 relating to extra judicial confession made by the accused appellant has to be read as a whole and when so read, it clearly spells out that the accused appellant while being deprived of the power of self control by grave and sudden provocation had caused the death of his father Siril Ekka, who gave the provocation and therefore the offence if any committed by the appellant does not travel beyond section-304 (Part-II) of the I.P.C. On the other hand, Shri U.N.S.Deo, appearing for the State argued that the testimony of Mst. Kurdula

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PW-2 and Mary Kumari PW-3 does not make out a case of grave and sudden provocation under exception-I to section-300 of the I.P.C. The extra judicial confession made by the accused coupled with the injuries sustained by Siril Ekka, the weapon used and the vital part where injury was caused twice clearly made a case under section-302 of I.P.C.

7. We have considered the rival submissions and have also gone through the record. There is no eye-witness regarding the assault by the accused appellant by Tangia on his father. The prosecution rests solely upon the testimony of Mst. Kurdula PW-2 and Mary Kumari PW-3 before whom the accused appellant had made an extra judicial confession. Mary Kumari PW-3, the real sister of the appellant has stated that upon being asked, the accused appellant had told her that he was starving for 3 days and when he sat for having food, his father kicked him twice whereupon he picked up the axe and assaulted his father on the head. No question has been asked in cross-examination which would render her testimony unworthy of credit. Mst. Kurdula PW-2,the sister-in-law of the appellant has also stated that on seeing her father-in-law lying in a pool of blood in the courtyard, she had asked the appellant who told her that a quarrel had ensued with his father while he was having his food wherein he had assaulted his father by Tangia resulting in his death. In cross examination, nothing has been elicited to discredit her.

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8. We have also gone through the evidence of Dr. S.B.Jain, PW-8, who has proved the injuries sustained by the deceased which leaves no manner of doubt that the deceased Siril Ekka had died a homicidal death. We have perused the evidence led by the prosecution and find that the trial Court had, on the basis of extra judicial confession of the appellant rightly held that, it was proved beyond the shadow of doubt that it was the accused appellant who had caused the death of Siril Ekka by assaulting him with a Tangia on the head and cheek.

9. The only point which remains for our consideration is as to what offence has been committed by the accused. We have to examine whether in the facts and circumstances of the case it could be said that the accused appellant while deprived of the power of self control upon grave and sudden provocation by his father had caused the death of Siril Ekka. It is settled law that whether the provocation in a given case was grave and sudden in order to exclude the offence from amounting to murder is a question of fact. The testimony of Mary Kumari PW-3 shows beyond doubt that the accused had been starving for 3 days and when he sat for having food, his father had kicked him twice which infuriated the accused appellant to such an extent that he picked up an axe and assaulted his father. In the case of *K.M. Nanavati Vs. State of Maharashtra,* reported in *A.I.R.-1962-SC-605* it has been held by the Hon'ble Apex Court that the test of "grave and sudden" provocation is whether a reasonable man belonging to the same class of society as

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the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self control.

10. In *Akhtar Vs. State* reported in *A.I.R.-1964-Allahabad* - 263, it was observed as under :

> " In determining whether a person accused of homicide is entitled to the benefit of the doctrine of grave and sudden provocation, the Courts in this country must consider the following matters: firstly, what is put forward as a grave and sudden provocation given by the victim, by means of actions, conduct, words or gestures, must not only be sudden but also be capable of being considered grave, according to the norms or standards which govern the accused. These norms or standards represent ideas and sentiments about what is right and wrong. They may be the result of the membership of a particular social group such as a nation, a community, or even a family-or of the peculiar history and circumstances of the accused, determining the accused's reactions towards the victim of a particular time. In every case, the test applied is an objective one in the sense that it must be capable of acceptance by reasonable men. The purely subjective or aberrant notions or outlook of the accused, even if due to his "constitutional" defects, over which he has no control, have to be disregarded. Secondly, the Court has to consider whether the accused acted normally or reasonably, according to the standards and norms applicable to his group, until he lost control over himself. If he himself acted improperly or unreasonably, so as to invite what is put forward as the provocation, he could not get the benefit of the doctrine. Thirdly, it has to be shown that the act causing death was committed after loss of self control but before self-possession has had an opportunity to return. This can often be presumed from the existence of a grave provocation and the sudden and drastic character of the violent and hasty act immediately following the provocation, but facts and circumstances may sometimes exist which destroy the presumption and show that self-

possession was not actually lost so that the accused could not get the benefit of the doctrine."

11. Bearing the above principles in mind, we find that the family of the accused appellant belong to the "Gond" community of District-Raigarh and thrive on agriculture. It is also borne out that they are village folk. Considering the mental status of a person who has been starving for 3 days, we find that the act of the deceased Siril Ekka in kicking the appellant twice while he was having food especially when the appellant had been starving for 3 days, was of such a nature that it could have created a situation in which the already starved appellant was deprived of his power of self control and the act of his father, annoyed him to such an extent that while being deprived of the power of self control, he inflicted the fatal blows on his father. In the given circumstances of the case, we find that the act of the accused appellant was upon grave and sudden provocation by the deceased. When a person loses the self control under "grave and sudden" provocation, he loses all faculties of calculation and balance of mind and the Court would not weigh in golden scales as to how many blows would be sufficient to convince a Court that the act done by the accused was under "grave and sudden" provocation and where he exceeded a particular number of blows, the act would be out of the category of "grave and sudden" provocation. When one loses the mental faculty upon being gravely provoked, one would not go on calculating the blows. The act of Siril Ekka in the instant case in giving two kicks to the starved appellant while having food could be

construed to be an act sufficient to provide grave and sudden provocation to the appellant and therefore the number of blows could never be material to consider the impact on the mind of the accused so as to take him out of the exception-I to section-300 of the I.P.C.

12. Under the peculiar facts and circumstances of the case, we find that when the starving accused appellant had been kicked twice by his father while he was eating his food, he lost his self control upon such grave and sudden provocation. In the facts and circumstances of the case it could be said that the accused appellant upon being provoked by Siril Ekka was deprived of the power of self control and caused the death of Siril Ekka. After carefully considering all the facts and circumstances of this case and nature of the society to which the accused appellant and the deceased belong and the mental status of the provoked person, we are convinced that the act of the accused appellant in causing the death of Siril Ekka clearly falls within the exception one to section-300 of the I.P.C. and amounts to culpable homicide not amounting to murder. We are also convinced that the act of the accused appellant does not travel beyond section-304-II of the I.P.C.

13. Consequently, the appeal is partly allowed. The appellant is acquitted of the charge under section-302 of the I.P.C. Conviction of the accused appellant is altered to section-304-II of the I.P.C. We sentence him to imprisonment for 10 years.

14. In the end, we appreciate the valuable assistance rendered by Shri Sandeep Shrivastava, who appeared as amicus curiae on behalf of the accused appellant.

Sd/-
Fakhruddin
Judge

21-07-2005

Sd/-
Dilip Raosaheb Deshmukh
Judge

21-07-2005